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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 09/627,558
Filing Date: July 28, 2000
Appellant(s): HERDER, THOMAS J.

Robin C. Clark
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 3/28/2007 appealing from the Office action mailed 10/11/2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-8, and 10-22 are rejected.

The amendment after final rejection filed on 4/20/2006 has not been entered.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

| | | |
|---|---|---|
| 6185316 | BUFFAM | 2-2001 |
| 5,897,616 | KANEVSKY | 4-1999 |
| 5,893,057 | FUJIMOTO | 4-1999 |
| 6,320,974 | GLAZE | 11-2001 |
| 6,324,271 | SAWYER | 11-2001 |
| 6,542,729 | CHMAYTELLI | 4-2003 |
| 4,998,279 | WEISS | 3-1991 |

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**Claims 1, 2, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buffam US 6,185,316 in view of Kanevsky US 5,897,616.**

As per claims 1, and 2, Buffam teaches a method of validating a user for a transaction by using a transaction card. Buffam teaches configuring a biometric profile for a user including a plurality of biometric samples, (Col 18 lines 18-35, 57-63). Buffam teaches associating said biometric profile with indicia, (Col 16 line 65- Col 17 line 8). Buffam teaches biometrically interrogating said user when said transaction is attempted, (Col 18 lines 65- Col 19 line 2). Buffam teaches approving the user if the biometric profiles match, (Col 17 lines 2-9). Buffam teaches biometrics using voice recognition, including a voice pattern according to a spoken phrase (Col 18 lines 39-44). Buffam does not teach random questions.

Kanevsky teaches matching voice samples taken from answers to random questions, (Col 3 lines 28-32, 39-44). Kanevsky teaches a spoken word representative of an answer to the random questions, (Col 3 line 34). It would have been obvious to use the random questions of Kanevsky with the voice recognition of Buffam because random questions ensure that a fraudulent user will not know the answers to gain access.

As per claim 3, Buffam teaches inputting an indicia (PIN) after the biometric response has been authenticated, (Col 17 lines 1-10).

As per claim 5, Buffam teaches configuring a biometric profile manually, (Col 18 lines 23-27).

**Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buffam US 6,185,316 in view of Kanevsky US 5,897,616 in view of Fujimoto US 5,893,057.**

The previous Buffam-Kanevsky combination teaches biometric authentication with a Pin. Buffam-Kanevsky fails to teach asking for a PIN if the biometric authentication fails.

Fujimoto teaches using a Pin as alternative authentication in case Biometric authentication fails, (Col 14 lines 20-30).

It would have been obvious to one of ordinary skill in the art to use the alternative authentication of Fujimoto with Buffam-Kanevsky to provide an alternate method of authentication in case a users biometrics are not correct, such as a, hoarse voice, or cut finger.

**Claims 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buffam US 6,185,316 in view of Kanevsky US 5,897,616 in view of Glaze US 6,320,974.**

As per claims 6, and 7 The previous Buffam-Kanevsky teaches configuring a biometric profile. Buffam-Kanevsky fails to teach updating said profile.

Glaze teaches automatically updating and configuring a biometric profile in a database of biometric profiles, (Col 4 lines 30-47).

It would have been obvious to one of ordinary skill in the art to use the Glaze's updating profiles with Buffam-Kanevsky's biometric profiles because people's biometric signatures change over time.

**Claims 8, 9, and 10, are rejected under 35 U.S.C. 103(a) as being unpatentable over Buffam US 6,185,316 in view of view of Kanevsky US 5,897,616 in view of Sawyer US 6,324,271.**

As per claim 8, Buffam teaches configuring a biometric profile for a user including a plurality of biometric samples, (Col 18 lines 18-35, 57-63). Buffam teaches biometrics using voice recognition, (Col 18 lines 39-44). Buffam teaches approving the user if the biometric profiles match, (Col 17 lines 2-9). Buffam teaches inputting indicia (PIN) after the biometric response has been authenticated, (Col 17 lines 1-10).

Buffam fails to teach PSTN.

Kanevsky teaches matching voice samples taken from answers to random questions, (Col 3 lines 28-32, 39-44). Kanevsky fails to teach PSTN.

Sawyer teaches a calling card in use with a PIN and biometric authentication for use over a PSTN network, (Col 4 lines 22-30, Col 7 lines 45-51).

It would be obvious to use the PSTN because it is the most widely used means for telephonic communication.

As per claim 9 the previous Buffam-Kanevsky combination fails to teach DTMF.

Sawyer teaches use of DTMF to answer random questions, (Col 7 line 53-60).

As per claim 10, Buffam-Kanevsky teaches inputting indicia (PIN) after the biometric response has been authenticated, (Buffet Col 17 lines 1-10).

**Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buffam US 6,185,316 in view of view of Kanevsky US 5,897,616 in view of Sawyer US 6,324,271 in view of Fujimoto US 5,893,057**

As per claim 11, Buffam-Kanevsky teaches biometric authentication with a Pin. Buffam-Kanevsky fails to teach asking for a PIN if the biometric authentication fails.

Fujimoto teaches using a Pin as alternative authentication in case Biometric authentication fails, (Col 14 lines 20-30).

**Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buffam US 6,185,316 in view of Sawyer US 6,324,271 in view of Chmaytelli US 6,542,729 in view of Weiss US 4,998,279**

As per claims 12, Sawyer teaches a network operable with a terminal in association with a transaction card, (Col 4 lines 20-24). Sawyer teaches a controller to handle network queries, (Col 6 lines 8-14). Sawyer teaches submitting a biometric profile for authentication, (Col 7 lines 45-52). Sawyer does not teach submitting the biometric authentication over a network. Sawyer does not teach determining if a fraudulent action is being attempted, and if so, to biometrically interrogate the user.

Chmaytelli teaches an authentication method wherein if a user fails to enter a password correctly the system will lock. Chmaytelli teaches that the user may unlock the system by using a voice recognition procedure, (Col 8 lines 6-20). Weiss teaches submitting biometric indicia over a telephone network to a store with biometric profiles for authentication.

It would have been obvious to one skilled in the art to use the network and biometric store of Weiss with the biometric authentication of Sawyer, so that the biometric profiles would be in a secure location.

As per claim 13, Buffam-Kanevsky combination fails to teach a calling card. Sawyer teaches the transaction to be placing a calling card call, or accessing an account, (Fig 1, Col 8 lines 64).

As per claim 14, Buffam-Kanevsky combination teaches using audio biometrics. Sawyer teaches using a voiceprint, (Col 7 line 50).

As per claim 15 Buffam-Kanevsky combination fails to teach using a fingerprint. Sawyer teaches using a fingerprint, (Col 7 line 50).

**Claims 16-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buffam US 6,185,316 in view of Kanevsky US 5,897,616 Sawyer US 6,324,271 in view of Weiss US 4,998,279.**

As per claims 16, Buffam teaches a method of validating a user for a transaction by using a transaction card. Buffam teaches configuring a biometric profile for a user including a plurality of biometric samples, (Col 18 lines 18-35, 57-63). Buffam teaches associating said biometric profile with indicia, (Col 16 line 65-

Col 17 line 8). Buffam teaches biometrically interrogating said user when said transaction is attempted, (Col 18 lines 65- Col 19 line 2). Buffam teaches approving the user if the biometric profiles match, (Col 17 lines 2-9).

Buffam teaches biometrics using voice recognition, including a voice pattern according to a spoken phrase (Col 18 lines 39-44).

Kanevsky teaches receiving spoken answers in response to submitted questions, and verifying the user and the answers via a database, (Col 3 lines 26-44).

Sawyer teaches a network operable with a terminal in association with a transaction card, (Col 4 lines 20-24). Sawyer teaches a controller to handle network queries, (Col 6 lines 8-14). It would have been obvious to one of ordinary skill in the art to use the controller of Sawyer with the biometrics of Baffam in order to incorporate network management.

Weiss teaches submitting biometric indicia over a telephone network to a store with biometric profiles for authentication.

It would have been obvious to one skilled in the art to use the network and biometric store of Weiss with the biometric authentication of Buffam, so that the biometric profiles would be in a secure location.

As per claim 17, Sawyer teaches the biometric is a fingerprint, (Col 7 line 50).

As per claim 18, Sawyer teaches the biometric is voice, (Col 7 line 50).

As per claim 19, Sawyer teaches an automated response unit, (Col 7 lines 30-37).

As per claim 20, Sawyer teaches a wired phone, (Col 5 lines 50-52).

As per claim 21, Sawyer teaches an Internet phone, (Col 56-58).

As per claim 22, Sawyer teaches a wireless communication device, (Col 5 line 55).

**(10) Response to Argument**

**A.**

Appellant argues in reference to claim 1 that Buffam US 6,185,316 in view Kanevsky US 5,897,616 does not teach randomly selecting one of a plurality of questions corresponding to a plurality of biometric sample received from the user. The appellant argues that Buffam does not teach random questions. The appellant argues that Kanevsky does not teach biometric responses to a randomly selected plurality of questions. The examiner admits that Buffam does not teach random questions. . The examiner asserts Kanevsky does teach biometric responses, and these responses are given in reaction to a randomly selected plurality of questions. Buffam however, is all that is needed to teach biometric responses. Buffam is relied on for biometric authentication, including a voice pattern according to a spoken phrase, see column 18 line 58 to column 19 line 2. The examiner only needs Kanevsky to teach random questions for authentication. Buffam teaches configuring the biometric profile for the user. Buffam teaches the querying the user for a biometric response. Buffam teaches the authentication process once the biometric input is entered. Buffam merely fails to teach the method of querying the user is a random question. Kanevsky remedies this deficiency by teaching a query by means of a random question.

The appellant argues that that Kanevsky teaches directly away from the invention because Kanevsky does not teach biometric responses in response to a

randomly selected plurality of questions. This is not the case. The examiner argues that Kanevsky does not state anything against using a random question as a query for a biometric response, thus Kanevsky does not teach away.

Appellant argues that claims 2, 3, and 5 depend on claim 1 and therefore are patentable over Bufffam US 6,185,316 and Kanevsky US 5,897,616 for the reasons the appellant argued in respect to claim 1. The examiner argues that these claims are rejected under the same arguments the examiner made with regards to Buffam and Kanevsky.

**B.**

Appellant argues that claim 4 depend on claim 1 and therefore are patentable over Bufffam US 6,185,316, Kanevsky US 5,897,616 and Fujimoto US 5,893,057, for the reasons the appellant argued in respect to claim 1. The examiner argues that these claims are rejected under the same arguments the examiner made with regards to Buffam and Kanevsky in claim 1 and in further view of Fujimoto.

**C.**

Appellant argues that claims 6, and 7 depend on claim 1 and therefore are patentable over Bufffam US 6,185,316, Kanevsky US 5,897,616 and Glaze US 6,320,974, for the reasons the appellant argued in respect to claim 1. The examiner argues that these claims are rejected under the same arguments the

examiner made with regards to Buffam and Kanevsky in claim 1 and in further view of Glaze.

**D.**

Appellant argues in reference to claim 8 that Buffam US 6,185,316 in view Kanevsky US 5,897,616 in view of Sawyer US 6,324,271 does not teach randomly selecting one of a plurality of questions corresponding to a plurality of biometric sample received from the user. The appellant argues that Buffam does not teach random questions. The appellant argues that Kanevsky does not teach biometric responses to a randomly selected plurality of questions. The examiner admits that Buffam does not teach random questions. . The examiner asserts Kanevsky does teach biometric responses, and these responses are given in reaction to a randomly selected plurality of questions. Buffam however, is all that is needed to teach biometric responses. Buffam is relied on for biometric authentication, including a voice pattern according to a spoken phrase, see column 18 line 58 to column 19 line 2. The examiner only needs Kanevsky to teach random questions for authentication. Buffam teaches configuring the biometric profile for the user. Buffam teaches the querying the user for a biometric response. Buffam teaches the authentication process once the biometric input is entered. Buffam merely fails to teach the method of querying the user is a random question. Kanevsky remedies this deficiency by teaching a query by means of a random question.

Appellant argues claim 9 is patentable over the prior art. The examiner objects to claim 9 as being dependent on rejected independent base claim 8. Claim 9 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Appellant argues that claim 10 depend on claim 8 and therefore are patentable over Bufffam US 6,185,316, Kanevsky US 5,897,616 and Sawyer US 6,324,271, for the reasons the appellant argued in respect to claim 8. The examiner argues that these claims are rejected under the same arguments the examiner made with regards to Buffam and Kanevsky and Sawyer in claim 8.

**E.**

Appellant argues that claim 11 depend on claim 8 and therefore are patentable over Bufffam US 6,185,316, Kanevsky US 5,897,616, Sawyer US 6,324,271, and Fujimoto US 5,893,057 for the reasons the appellant argued in respect to claim 8. The examiner argues that this claim is rejected under the same argument the examiner made with regards to Buffam and Kanevsky and Sawyer in claim 8 in further view of Fujimoto.

**F.** Appellant do not wish to present arguments for claims 12-15 and requests cancellation of said claims.

**G.**

Appellant argues as per claim 16 and the Bufffam US 6,185,316, Kanevsky US 5,897,616, Sawyer US 6,324,271, Weiss US 4,998,279 rejection that the examiner fails to address the specific features recited in the claim. The appellant argues what the claim does and does not state. The examiner asserts that the appellant is arguing semantics.

The appellant argues That the examiner does not meet the limitation of "an access control system for use with a transaction card based scheme"

Examiner argues that the combination of Buffam and Kanevsky teach an access control system for use with a transaction card based scheme. Both Buffam and Kanevsky teach transaction cards. Kanevsky teaches a system for access control secure access, (Col 3 lines 10-15), magnetic strip card (Col 6 lines 5-20).

The appellant argues that the examiner does not meet the limitation of "a profile database coupled to said server said profile database having a plurality of biometric samples inherently coupled to said user wherein said plurality of biometric samples relate to a plurality of questions"

Examiner argues the Buffam-Kanevsky combination teaches said limitation. Buffam teaches a profile of biometric samples coupled to said users (a data set of biological features, multiple samples during enrollment) (Col 18 lines 25-35, 56-60). Kanevsky teaches biometric responses to a plurality of questions (obtaining voice data in response to a plurality of random questions) (Col 3 lines 26-44).

The appellant argues that the examiner does not meet the limitation of "a network operable with a terminal said terminal for interacting with a user in association

with a transaction card and a controller disposed in the network to query said user when said user attempts a transaction using said transaction card.

The examiner argues that Kanevsky teaches a transaction card authentication system in a network, and Sawyer explicitly discloses a controller used in an authentication process over a network involving a transaction card (Col 4 lines 20-24, Col 6 8-14).

The appellant argues that the examiner does not meet the limitation of "the controller queries the user for a response relating to a randomly selected one of the biometric samples and if the response does not match a corresponding entry in the profile database access is denied to the user for the transaction

The examiner argues that the Buffam Kanevsky Sawyer combination, as shown above, teaches an access control system using biometric authentication in response to random questions that compares the response to a profile database to grant access or deny access based on the comparison of the biometric responses Kanevsky (Col 3 lines 43-51), Buffam (Col 18 lines 64-Col 19 line 2)

Appellant argues that the cited combination does not disclose or suggest a controller that queries the user for a response relating to a randomly selected one of biometric samples, where the plurality of biometric samples relate to a plurality of question.

The appellant argues that Buffam does not teach random questions. The appellant argues that Sawyer and Kanevsky do not teach biometric responses to a randomly selected plurality of questions. The examiner admits that Buffam does

not teach random questions. The examiner asserts Kanevsky does teach biometric responses, and these responses are given in reaction to a randomly selected plurality of questions. Buffam however, is all that is needed to teach biometric responses. Buffam is relied on for biometric authentication, including a voice pattern according to a spoken phrase, see column 18 line 58 to column 19 line 2. The examiner only needs Kanevsky to teach random questions for authentication. Buffam teaches configuring the biometric profile for the user. Buffam teaches the querying the user for a biometric response. Buffam teaches the authentication process once the biometric input is entered. Buffam merely fails to teach the method of querying the user is a random question. Kanevsky remedies this deficiency by teaching a query by means of a random question.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

KAMBIZ ZAND
SUPERVISORY PATENT EXAMINER

Respectfully submitted,

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